

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel.,
STATE ENGINEER, et al.,

Plaintiffs,

vs.

JOHN ABBOTT, et al.,

Defendants.

CIVIL NO. 68-7488 MV/LFG
Rio Santa Cruz Adjudication

and

CIVIL NO. 70-8650 MV/LFG
Rio de Truchas Adjudication

CONSOLIDATED

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on the Objections to Magistrate Judge's August 26, 2014 Findings and Recommended Disposition. Doc. 2953. For the reasons stated below, the Court will **SUSTAIN** the Objections in part and **OVERRULE** the Objections in part as moot.

On August 26, 2014, United States Magistrate Judge Lorenzo F. Garcia granted Stelzner, Warburton, Flores, Sanchez & Dawes, P.A.'s motion to withdraw as counsel for the Acequia del Llano de Abeyta ("Abeyta"). *See* Doc. 2950. Judge Garcia notified Abeyta that D.N.M.LR-Civ. 83.7 requires that Abeyta can only appear in this case with an attorney and that under D.N.M.LR-Civ. 83.8(c), if Abeyta is not represented by a substitute attorney, any filings made by Abeyta may be stricken and default judgment or other sanctions imposed. *See* Doc. 2947. Judge Garcia also ordered Abeyta to have a federally licensed attorney enter his or her appearance within 30 days, or show cause why the Court should not dismiss Abeyta's claims without prejudice for failure to comply with the District of New Mexico's Local Rule of Civil Procedure that a corporation, partnership or business entity other than a natural person can appear only with an attorney. *See* Doc. 2947. Abeyta did not comply with Judge Garcia's Order.

Judge Garcia then entered his Magistrate Judge's Findings and Recommended Disposition which recommended that the Court dismiss Abeyta's claims without prejudice. *See* Doc. 2951.

Acequia de la Sierra then filed a motion for clarification of Judge Garcia's Findings and Recommended Disposition. *See* Doc. 2952. Acequia de la Sierra is a consortium of three ditches on the Rio de Truchas and is the subject, along with Abeyta and other acequias, of a Special Master's Report, Doc. 2728, a Memorandum Opinion and Order by United States District Judge Bruce D. Black, Doc. 2907, and a Memorandum Opinion and Order by United States District Judge Martha Vázquez, Doc. 2944. Acequia de la Sierra asked Judge Garcia to clarify Findings and Recommended Disposition "to reflect the fact that all the issues raised in this case by [Abeyta] were resolved by Judge Black's Order of September 14, 2011 and Judge Vázquez's Order of June 10, 2014." Doc. 2952. Acequia de la Sierra noted that "Since all of the issues raised by Abeyta have been adjudicated, there are no currently pending issues to dismiss in this case." Acequia de la Sierra sought clarification that "this Court does not intend to vacate, or in any way alter, the force and effect of Judge Black's September 14, 2011 Order or Judge Vazquez's June 10, 2014 Order."

Judge Garcia granted Acequia de la Sierra's motion for clarification noting that the dismissal language in his Findings and Recommended Disposition referred to any pending claims of Abeyta's which have not yet been resolved. *See* Doc. 2954. Judge Garcia further clarified that the dismissal language does not affect any of Abeyta's claims that have been resolved in Orders by Judge Black or Judge Vázquez.

Acequia de la Sierra also filed the Objections which are now before the Court. In its Objections to Judge Garcia's Findings and Recommended Disposition, which were filed before

Judge Garcia granted Acequia de la Sierra's motion for clarification, Acequia de la Sierra asserts that "all of Abeyta's claims have been finally and fully adjudicated by this Court *against* Abeyta [after more than a decade of litigation and judicial involvement and an investment of considerable attorney and judicial resources]," that "dismissal of Abeyta's claims – as recommended by Judge Garcia in his August 26 Findings – would have the unintended consequence of benefitting Abeyta by returning it to the legal status that it enjoyed prior to the time that adverse decisions were issued on the claims that it raised in this general stream adjudication," that "Abeyta has no further pending claims before this Court in this matter," and therefore, "dismissal is not necessary or appropriate." Doc. 2953 at 2-3. Acequia de la Sierra concludes that the Court should enter an order prohibiting Abeyta from initiating any further proceedings in this case unless and until it retains duly licensed counsel and the Court should refrain from dismissing Abeyta's claims without prejudice.


The Court has made a *de novo* determination of those portions of Judge Garcia's Findings and Recommended Disposition to which Acequia de la Sierra objected. *See* 28 U.S.C. § 636(b)(1). The Court will overrule as moot Acequia de la Sierra's objection regarding those claims of Abeyta's that the Court has already ruled on, because Judge Garcia clarified that his recommendation of dismissal did not apply to any of Abeyta's claims that have been previously resolved by the Court. The Court will sustain Acequia de la Sierra's objection regarding any pending claims of Abeyta's which have not yet been resolved, because there are no currently pending claims of Abeyta's to dismiss in this case.

The Clerk of the Court shall mail a copy of this Order to:

Acequia del Llano de Abeyta
c/o Perry Trujillo
61 Country Road 8
Espanola, NM 87532.

IT IS SO ORDERED.

Dated this 6 day of November 2014.



MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE

Approved:



Lorenzo F. Garcia
United States Magistrate Judge